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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,763	02/04/2004	Scott Wadsworth	WADS101	5705
7590	12/13/2006		EXAMINER	
FRANK J. DYKAS DYKAS, SHAVER & NIPPER, LLP PO BOX 877 BOISE, ID 83701-0877			NEAL, TIMOTHY J	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/772,763	WADSWORTH ET AL.
	Examiner	Art Unit
	Timothy J. Neal	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 October 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6,8-15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-4,6,8-13,17 and 19 is/are rejected.
- 7) Claim(s) 14 and 15 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>20061209</u>
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

This action is in response to the Applicant's correspondence received on 10/10/2006. The Examiner would like to thank the Applicant's attorney Stephen Nipper for his attempt to expedite prosecution during a phone call on 11/07/2006. Unfortunately, no agreement could be reached that would put the entire application in condition for allowance. An interview summary is attached to address the topics discussed and the results of the discussion.

The Applicant has canceled claims 5, 7, 16, and 18.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6, 8, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites "...in a generally downward direction to close said jaws and to open said jaws..." as being the nature of the lever motion relative to the jaw motion. The Examiner considers this indefinite because the disclosure suggests that downward motion opens said jaws and upward motion closes said jaws. The Examiner suggests that the claim recite the jaw and lever motion as disclosed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Teitelbaum et al. (US 4,572,179).

Teitelbaum discloses:

1. A system for castrating animals comprising: an endless loop of resiliently stretchable material having a desired thickness and size (Item 100); and a device for stretching and placing said loop about a scrotal sac, said device having a pair of jaws configured to engage a portion of said endless loop (Items 35 and 45), said jaws further pivotally connected to a base portion (Item 51), said base portion configured for slideable engagement along a holding rail (Item 65) said holding rail also having a portion configured to engage a portion of said endless loop at one end (Item 66) and a handle for grasping at the other end (Item 42), said device further comprising a lever (Item 32) connected to said base portion by a pivot pin (Item 64) whereby said lever moves said base portion along said holding rail away from handle when said lever is moved in a generally downward direction to close said jaws and to open said jaws when said lever is moved in a generally upward direction toward said handle.

10. A device for stretching rubber bands such as those used in removing body parts by constricting blood flow, said device comprised of a pair of jaws (Items 35 and 45) configured to engage a portion of said endless loop, said jaws further pivotally connected to a base portion (Item 51), said base portion configured for slideable engagement along a holding rail (Item 65) said holding rail also having a portion configured to engage a portion of said endless loop (Item 65) and a portion connected to a grasping handle (Item 42), and an articulating device (Item 32) configured to move said base portion so as to manipulate said jaws, so as to engage and stretch said endless loop.

The reference also discloses the limitations of claims 2, 3, 8, 9, 11-13, and 19 (see Fig 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teitelbaum et al '179.

Teitelbaum discloses the invention substantially as claimed as stated above. Teitelbaum does not disclose the brace arm for the lever. However, the Examiner

considers it to be well known in the art to add support to a lever in the form of a brace arm. Such a modification provides the advantage of supporting the lever so that it may functionally provide mechanical advantage to the device. Therefore, it would have been obvious to a person having ordinary skill in the art to modify Teitelbaum's lever and handle configuration to include a brace arm for the advantage stated above.

Allowable Subject Matter

Claims 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance: the Teitelbaum reference gives no reason or indication that spacer bars as recited in the above claims would provide any advantage or even allow the device to work as disclosed. Therefore, the Examiner does not consider it obvious to combine the spacer bars of Malecki et al. (US 5,885,590) cited in a prior action with the Teitelbaum reference. Furthermore, the Malecki reference gives no motivation that would lead one of ordinary skill in the art to modify Teitelbaum to include the spacer bars.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Domenge (US 6,332,274) shows a brace arm attached to a lever as is known in the art (Fig 9 Item 68).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Neal whose telephone number is (571) 272-0625. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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ANHTUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER

10/6/06